

Draft of November 6, 2019

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
SECURITIES AND EXCHANGE COMMISSION,	:	17cv1789 (DLC)
	:	
Plaintiff,	:	<u>SPECIAL VERDICT</u>
	:	<u>FORM</u>
-v-	:	
	:	
VALI MANAGEMENT PARTNERS d/b/a AVALON	:	
FA LTD, NATHAN FAYYER, AND SERGEY	:	
PUSTELNIK a/k/a SERGE PUSTELNIK,	:	
	:	
Defendants.	:	
	:	
-----	X	

**PLEASE CHECK (✓) YOUR ANSWERS**

**All jurors must agree on the answers to all of the questions:**

**Issue I: Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) and Substantial Assistance Under Section 20(e)**

1. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_ NO \_\_\_\_\_

2. If your answer to Question 1 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

3. If your answer to Question 1 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

4. Did the SEC establish by a preponderance of the evidence that Nathan Fayyer violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_ NO \_\_\_\_\_

5. If your answer to Question 4 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayyer in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

6. Did the SEC establish by a preponderance of the evidence that Sergey Pustelnik violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_ NO \_\_\_\_\_

7. If your answer to Question 6 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Sergey Pustelnik in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Issue II: Section 17(a)(1) of the Securities Act and Substantial Assistance Under Section 15(b)**

8. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 17(a)(1) of the Securities Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

9. If your answer to Question 8 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

10. If your answer to Question 8 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

11. Did the SEC establish by a preponderance of the evidence that Nathan Fayer violated Section 17(a) (1) of the Securities Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

12. If your answer to Question 11 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayer in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

13. Did the SEC establish by a preponderance of the evidence that Sergey Pustelnik violated Section 17(a) (1) of the Securities Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

14. If your answer to Question 13 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayer knowingly or recklessly provided substantial assistance to Sergey Pustelnik in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

**Issue III: Section 17(a) (3) of the Securities Act and Substantial Assistance Under Section 15(b)**

15. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 17(a) (3) of the Securities Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

16. If your answer to Question 15 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

17. If your answer to Question 15 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

18. Did the SEC establish by a preponderance of the evidence that Nathan Fayyer violated Section 17(a) (3) of the Securities Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

19. If your answer to Question 18 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayyer in doing so?

YES \_\_\_\_\_ NO \_\_\_\_\_

20. Did the SEC establish by a preponderance of the evidence that Sergey Pustelnik violated Section 17(a) (3) of the Securities Act?

YES \_\_\_\_\_

NO \_\_\_\_\_

21. If your answer to Question 20 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayer knowingly or recklessly provided substantial assistance to Sergey Pustelnik in doing so?

YES \_\_\_\_\_

NO \_\_\_\_\_

**Issue IV: Section 9(a)(2) of the Exchange Act and Substantial Assistance Under Section 20(e)**

22. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_

NO \_\_\_\_\_

23. If your answer to Question 22 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_

NO \_\_\_\_\_

24. If your answer to Question 22 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES \_\_\_\_\_

NO \_\_\_\_\_

25. Did the SEC establish by a preponderance of the evidence that Nathan Fayer violated Section 9(a) (2) of the Exchange Act?

YES \_\_\_\_\_

NO \_\_\_\_\_

26. If your answer to Question 25 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayer in doing so?

YES \_\_\_\_\_

NO \_\_\_\_\_

**Issue V: Section 20(a) of the Exchange Act (Control Person Liability)**

27. Did the SEC establish by a preponderance of the evidence that any of Avalon's Traders violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_

NO \_\_\_\_\_

If your answer to Question 27 is YES, answer Questions 28 through 31:

28. Is Avalon liable as a control person under Section 20(a) of the Exchange Act for the Avalon's Traders' violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_

NO \_\_\_\_\_

29. Did Avalon know, or was Avalon reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_

NO \_\_\_\_\_

30. Is Nathan Fayyer liable as a control person under Section 20(a) of the Exchange Act for the Avalon Traders' violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_ NO \_\_\_\_\_

31. Did Nathan Fayyer know, or was he reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_ NO \_\_\_\_\_

32. Did the SEC establish by a preponderance of the evidence that any of Avalon's Traders violated Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

If your answer to Question 32 is YES, answer Questions 33 through 36:

33. Is Avalon liable as a control person under Section 20(a) of the Exchange Act for the Avalon's Traders' violation of Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

34. Did Avalon know, or was Avalon reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

35. Is Nathan Fayyer liable as a control person under Section 20(a) of the Exchange Act for the Avalon Traders' violation of Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_ NO \_\_\_\_\_

36. Did Nathan Fayyer know, or was he reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_

NO \_\_\_\_\_

If you found in answer to Question 1 that Avalon violated Section 10(b) of the Exchange Act and Rules 10b-5(a) or (c), answer Questions 37 and 38:

37. Is Sergey Pustelnik liable as a control person under Section 20(a) of the Exchange Act for the Avalon violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) or (c)?

YES \_\_\_\_\_

NO \_\_\_\_\_

38. Did Sergey Pustelnik know, or was he reckless in not knowing, that Avalon was engaged in a violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES \_\_\_\_\_

NO \_\_\_\_\_

If you found in answer to Question 22 that Avalon violated Section 9(a)(2) of the Exchange Act, answer Questions 39 and 40:

39. Is Sergey Pustelnik liable as a control person under Section 20(a) of the Exchange Act for the Avalon violation of Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_

NO \_\_\_\_\_

40. Did Sergey Pustelnik know, or was he reckless in not knowing, that Avalon was engaged in a violation of Section 9(a)(2) of the Exchange Act?

YES \_\_\_\_\_

NO \_\_\_\_\_



**Issue VI: The Layering and Cross-Market Strategies**

If you have answered any question with a YES, answer Questions 41 through 44:

41. Did the SEC prove by a preponderance of the evidence that orders placed by Avalon constituted a layering strategy?

YES \_\_\_\_\_

NO \_\_\_\_\_

42. If your answer to Question 43 is YES, did the SEC prove by a preponderance of the evidence that the layering strategy constituted a manipulation of the securities markets?

YES \_\_\_\_\_

NO \_\_\_\_\_

43. Did the SEC prove by a preponderance of the evidence that orders placed by Avalon constituted a cross-market strategy?

YES \_\_\_\_\_

NO \_\_\_\_\_

44. If your answer to Question 45 is YES, did the SEC prove by a preponderance of the evidence that the cross-market strategy constituted a manipulation of the securities markets?

YES \_\_\_\_\_

NO \_\_\_\_\_

After completing the form, each juror who agrees with this verdict must sign below:

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Foreperson

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